1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 JOHN WESLEY PARRATT, JR. 11 Petitioner, No. CIV-S-02-546 LKK KJM P 12 VS. 13 GAIL LEWIS, Warden, Respondent. 14 ORDER 15 16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of 17 this court's March 31, 2005 denial of his application for a writ of habeas corpus. Before 18 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); 19 Fed. R. App. P. 22(b). 20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the 21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. 22 § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues 23 satisfy" the requirement. 28 U.S.C. § 2253(c)(3). 24 A certificate of appealability should be granted for any issue that petitioner can 25 demonstrate is "debatable among jurists of reason," could be resolved differently by a different court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford, 26

Case 2:02-cv-00546-LKK-KJM Document 31 Filed 06/14/05 Page 2 of 2

290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹ Petitioner has made a substantial showing of the denial of a constitutional right in the following issue(s) presented in the instant petition: whether the state courts erred in finding the evidence of petitioner's prior convictions from Oregon sufficient to constitute "strikes" under California law. Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is issued in the present action. DATED: June 13, 2005. /s/Lawrence K. Karlton **UNITED STATES DISTRICT JUDGE** /parr0546.830.grt

¹ Except for the requirement that appealable issues be specifically identified, the standard for issuance of a certificate of appealability is the same as the standard that applied to issuance of a certificate of probable cause. Jennings, at 1010.